

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

Pole Zero Corporation  
West Chester, Ohio,

**Respondent.**

) Docket No. **CAA-5\* 2001-0 12**  
)  
) **Proceeding to Assess a**  
) **Civil Penalty under**  
) **Section 113(d) of the**  
) **Clean Air Act,**  
) **42 U.S.C. § 7413(d)**  
)

---

**Administrative Complaint**

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination, or Suspension of Permits" (Consolidated Rules), 40 C.F.R. Part 22, for violations of the Ohio State Implementation Plan, approved under Section 110 of the Act, and Section 112 of the Act, 42 U.S.C. § 7412, and the regulations promulgated thereunder setting forth the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning, 40 C.F.R. Part 63, Subpart T.

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Pole Zero Corporation, a corporation doing business in West Chester, Ohio.

**Statutory and Regulatory Background**

4. Section 110 of the Act, 42 U.S.C. § 7410, requires each State to adopt and submit a plan which provides for the implementation, maintenance, and enforcement of any national primary or secondary standard established pursuant to Section 109 of the Act, 42 U.S.C. § 7409. These plans are required to include enforceable emission limitations, control measures, schedules for compliance, and permit programs for new sources.

5. Section 110(n)(1) of the Act, 42 U.S.C. § 7410(n)(1), provides that any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to Section 110 as in effect prior to November 15, 1990, shall remain in effect as part of such applicable implementation plan.

6. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, the Administrator approved Ohio Administrative Code (OAC) Chapter 3745-31 as part of the federally enforceable State Implementation Plan (SIP) on October 23, 1980. This approval became effective on October 31, 1980 (45 Fed. Reg. 72119). This includes OAC 3745-31-02, which requires a permit to install (PTI).

7. OAC 3745-31-02 (A) provides that "no person shall cause, permit, or allow the installation of a new source of air pollutants ... or cause, permit, or allow the modification of an air contaminant source ... without first obtaining a permit to install from the director."

8. 40 C.F.R. § 52.23 states that failure to comply with the provisions of the SIP is a violation subject to enforcement under Section 113 of the Act.

9. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Halogenated Solvent Cleaning (Degreaser MACT) at 40 C.F.R. §§ 63.460 through 63.469.

10. The NESHAP for Halogenated Solvent Cleaning applies to each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform, or any combination of these halogenated hazardous air pollutant (HAP) solvents, in a total concentration greater than five percent by weight, as a cleaning and/or drying agent, at 40 C.F.R. § 63.460(a).

11. 40 C.F.R. § 63.460 (c) requires that each solvent cleaning machine subject to 40 C.F.R. Part 63, Subpart T, that commences construction or reconstruction after November 29, 1993, shall achieve compliance with the provisions of that subpart immediately upon start-up.

12. 40 C.F.R. § 63.468(d) provides that each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of 40 C.F.R. § 63.463 shall submit to the Administrator an initial statement of compliance for each solvent cleaning machine.

13. 40 C.F.R. § 63.468(f) provides that each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of 40 C.F.R. § 63.463 shall submit an annual report by February 1 of the year following the one for

which the reporting is being made.

14. 40 C.F.R. § 63.468(h) provides that each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of 40 C.F.R. § 63.463 shall submit an exceedance report to the Administrator semiannually except when the Administrator determines on a case-by-case basis that more frequent reporting is necessary to accurately assess the compliance status of the source, or an exceedance occurs. Once an exceedance has occurred the owner or operator shall follow a quarterly reporting format until a request to reduce reporting frequency under paragraph (i) of this section is approved.

15. 40 C.F.R. § 63.463 (a) provides that, except as provided in 40 C.F.R. § 63.464, each owner or operator of a solvent cleaning machine subject to the provisions of this subpart shall ensure that each existing or new batch vapor or in-line solvent cleaning machine subject to the provisions of this subpart conforms to the design requirements specified in 40 C.F.R. § 63.463(a)(1) through (a)(7).

16. 40 C.F.R. § 63.463(e)(2)(i) provides that if a freeboard refrigeration device is used to comply with the standards, the owner or operator shall ensure that the chilled air blanket temperature (in OF), measured at the center of the air blanket, is no greater than 30 percent of the solvent's boiling point.

17. 40 C.F.R. § 63.466(a) provides that each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the equipment standards in 40 C.F.R. §

63.463(b)(1)(i), (b)(2)(i), (c)(1)(i), or (c)(2)(i) shall conduct monitoring and record the results on a weekly basis for the control devices.

18. Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A), prohibits any person from operating a source in violation of any emissions standard, limitation, or regulation promulgated under Section 112.

19. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for, among other things, NESHAP and SIP violations that occurred prior to January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). The Debt Collection Improvements Act of 1996 increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for, among other things, NESHAP and SIP violations that occurred on or after January 31, 1997.

20. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

21. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this

complaint.

**General Allegations**

22. Pole Zero is a "person" as defined at Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

23. Pole Zero owns and operates a facility that designs and manufactures digitally tunable radio frequency filter products, located at 5530 Union Centre Drive, West Chester, Ohio, which contains a degreaser installed in August 1998.

24. The degreaser is a batch vapor cleaning machine.

25. The degreaser uses trichloroethylene in a total concentration greater than five percent by weight, as a cleaning and/or drying agent.

26. The degreaser has a solvent/air interface area less than thirteen square feet.

27. The degreaser is subject to the provisions of 40 C.F.R. Part 63, Subpart T.

28. On December 27, 2000, Bharat Mathur, Director, Air and Radiation Division, Region 5, issued a Notice of Violation pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), and a Finding of Violation to Pole Zero, alleging violations of the applicable NESHAP for Halogenated Solvent Cleaning, 40 C.F.R. § 63.460-469, and the Ohio State Implementation Plan for permits to install, Ohio Administrative Code Chapter 3745-31 (45 Fed. Reg. 72119).

29. U.S. EPA and Pole Zero held, by telephone, a conference on January 24, 2001, to discuss the Notice of Violation and Finding of Violation in accordance with Section 113 of the Act.

**Specific Allegations**

**Count I - OAC 3745-31-02(A)**

30. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.

31. According to OAC 3745-31-02(A), no person shall cause, permit, or allow the installation of a new source of air pollutants or the modification of an air contaminant source without first obtaining a permit to install from the director.

32. Pole Zero received a final PTI from Ohio Environmental Protection Agency (Ohio EPA) on July 11, 2000.

33. Pole Zero's failure to secure a PTI prior to installation of the degreaser constitutes a violation of OAC 3745-31-02(A).

**Count II - 40 C.F.R. § 63.468(b)**

34. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.

35. According to 40 C.F.R. § 63.468(b), each owner or operator of a new solvent cleaning machine subject to the provisions of this subpart shall submit an initial notification report to the Administrator. New sources for which the construction or reconstruction of an affected source commenced after December 2, 1994, shall submit this report as soon as practicable before construction or reconstruction is planned to commence.

36. Pole Zero submitted the initial notification report on June 20, 2000.

37. Pole Zero's failure to submit an initial notification

as soon as practicable before the August 1998 installation of the new degreaser, constitutes a violation of the reporting deadline established under 40 C.F.R. § 63.468(b), and Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

**Count III - 40 C.F.R. § 63.468(d)**

38. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.

39. According to 40 C.F.R. § 63.468(d), each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of 40 C.F.R. § 63.463 shall submit to the Administrator an initial statement of compliance for each solvent cleaning machine.

40. In accordance with 40 C.F.R. § 63.468(d), for new sources, the initial statement of compliance shall be submitted to the Administrator no later than 150 days after start-up or May 1, 1995, whichever is later.

41. Pole Zero submitted an initial statement of compliance on June 20, 2000.

42. Pole Zero's failure to submit an initial statement of compliance within 150 days of the August 1998 installation and start-up of the new degreaser, constitutes a violation of the reporting deadline established under 40 C.F.R. § 63.468(d), and of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

**Count IV - 40 C.F.R. § 63.468(f)**

43. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.

44. According to 40 C.F.R. § 63.468(f), each owner or



operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of 40 C.F.R. § 63.463 shall submit an annual report by February 1 of the year following the one for which the reporting is being made.

45. Pole Zero did not submit the annual reports required for the period of August 1998 through December 31, 1998, and January 1, 1999 through December 31, 1999.

46. Pole Zero's failure to submit the annual reports for 1998 and 1999 constitutes a violation of the reporting deadline established under 40 C.F.R. § 63.468(f) and Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

**Count V - 40 C.F.R. § 63.468(h)**

47. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.

48. According to 40 C.F.R. § 63.468(h), each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of 40 C.F.R. § 63.463 shall submit an exceedance report to the Administrator semiannually except when the Administrator determines on a case-by-case basis that more frequent reporting is necessary to accurately assess the compliance status of the source or an exceedance occurs.

49. Pole Zero did not submit the exceedance reports required for the periods of August 1, 1998 through December 31, 1998; January 1, 1999 through June 3, 1999; July 1, 1999 through December 31, 1999; January 1, 2000 through June 30, 2000; and July 1, 2000 through December 31, 2000.

50. Pole Zero's failure to submit the exceedance reports

for 1998, 1999, and 2000 constitutes a violation of the reporting deadline established under 40 C.F.R. § 63.468(h) and Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

**Count VI - 40 C.F.R. § 63.463(a)(3)**

51. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.

52. According to 40 C.F.R. § 63.463 (a), except as provided in 40 C.F.R. § 63.464, each owner or operator of a solvent cleaning machine subject to the provisions of this subpart shall ensure that each existing or new batch vapor or in-line solvent cleaning machine subject to the provisions of this subpart conforms to the design requirements specified in paragraphs (a)(1) through (a)(7) of this section. Paragraph (a)(3) of 40 C.F.R. § 63.463 provides that each cleaning machine shall have an automated parts handling system capable of moving parts or parts baskets at a speed of 3.4 meters per minute (11 feet per minute) or less from the initial loading of parts through removal of cleaned parts.

53. Pole Zero installed an automated parts handling system meeting the requirements of 40 C.F.R. § 63.463 (a)(3) on October 2, 2000, more than two years after the start-up of the new degreaser in August 1998.

54. Pole Zero's failure to have an automated parts handling system installed on the degreaser immediately upon start-up of the degreaser constitutes a violation of the compliance requirements established under 40 C.F.R. § 63.463(a)(3) and Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

**Count VII - 40 C.F.R. § 63.463(e)(2)(i)**

55. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.

56. According to 40 C.F.R. § 63.463(e)(2)(i), if a freeboard refrigeration device is used to comply with these standards, the owner or operator shall ensure that the chilled air blanket temperature (in OF), measured at the center of the air blanket, is no greater than 30 percent of the solvent's boiling point.

57. During an inspection conducted by the Ohio EPA on June 20, 2000, the freeboard refrigeration device was at a temperature well above the limit set at 40 C.F.R. § 63.463(e)(2)(i).

58. Pole Zero's failure to achieve the required temperature in the freeboard refrigeration device in the degreaser constitutes a violation of the compliance requirements established under 40 C.F.R. § 63.463(e)(2)(i) and Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

**Count VIII - 40 C.F.R. § 63.466(a)**

59. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.

60. According to 40 C.F.R. § 63.466(a), except as provided in paragraph (g) of this section, "each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the equipment standards in 40 C.F.R. § 63.463(b)(1)(i), (b)(2)(i), (c)(1)(i), or (c)(2)(i) shall conduct monitoring and record the results on a weekly basis for the control devices, as appropriate, specified in paragraphs (a)(1) and (a)(2) of this

section."

61. Pole Zero did not perform the required monitoring and maintain appropriate records for the freeboard refrigeration device on a weekly basis.

62. Pole Zero's failure to perform the required monitoring and maintain appropriate records constitutes a violation of the monitoring and recordkeeping requirements established under 40 C.F.R. § 63.466(a) and Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

**Proposed Civil Penalty**

63. The Administrator must consider the factors specified in Section 113(e), 42 U.S.C. § 7413(e), of the Act when assessing an administrative penalty under Section 113(d), 42 U.S.C. § 7413(d).

64. The proposed civil penalty herein has been determined under those authorities in accordance with Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), which requires the Complainant to take the following factors into consideration in determining the amount of penalty assessed under Section 113:

- (a) the size of the Respondent's business;
- (b) the economic impact of the penalty on the business;
- (c) Respondent's full compliance history and good faith efforts to comply;
- (d) the duration of the violations alleged in the Complaint as established by credible evidence (including evidence other than the applicable test

method);

- (e) payment by Respondent of penalties previously assessed for the same alleged violations;
- (f) the economic benefits of noncompliance; and
- (g) the seriousness of the alleged violations.

65. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent in the amount of **\$159,043**. This proposed penalty was calculated under Section 113(e) of the Act, with specific reference to the Clean Air Act Stationary Source Penalty Policy (Penalty Policy). The Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors set forth above to particular cases. Enclosed with the complaint served on Respondent is a copy of the Penalty Policy.

66. The proposed penalty of \$159,043 reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of its business and the economic impact of the proposed penalty on its business.

67. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

#### **Rules Governing This Proceeding**

68. The "Consolidated Rules of Practice Governing the

Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

**Filing and Service of Documents**

69. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

70. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Orelia Merchant to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Orelia Merchant at (312) 886-2241. Orelia Merchant's address is:

Orelia Merchant (C-14J)  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Penalty Payment**

71. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by

delivering the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Orelia Merchant and to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Opportunity to Request a Hearing**

72. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 73 through 78 below.

**Answer**

73. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in

paragraph 69, above, and must serve copies of the written answer on the other parties.

74. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

75. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

76. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

77. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 72 above.

78. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section



22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

#### **Settlement Conference**

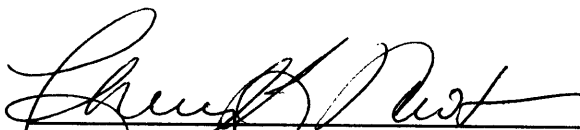
79. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Orelia Merchant at the address or phone number specified in paragraph 70, above.

80. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

81. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

6/29/01  
Date

  
Cheryl Newton, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

In the Matter of Pole Zero Corporation  
Docket No. : "

**DA-5- 2001-012**

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number DA-5- 2001-012 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

on the 2 day of July, 2001.

Alicia Knuth for  
Loretta Shaffer, Secretary  
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 70993400 000095810287